

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 22, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 17-F-0597 - Application of High River Energy Center, LLC
for a Certificate of Environmental
Compatibility and Public Need Pursuant to
Article 10 of the Public Service Law for
Construction of a Solar Electric Generating
Facility Located in the Town of Florida,
Montgomery County.

ORDER APPROVING COMPLIANCE FILING
75 SUBJECT TO CONDITIONS

(Issued and Effective June 26, 2023)

BY THE COMMISSION:

INTRODUCTION

On March 11, 2021, the New York State Board on
Electric Generation Siting and the Environment (Siting Board)
granted a Certificate of Environmental Compatibility and Public
Need, with Conditions (Certificate Order)¹ to High River Energy
Center, LLC (High River or Certificate Holder) pursuant to

¹ Case 17-F-0597, Order Granting Certificate of Environmental
Compatibility and Public Need, With Conditions (issued
March 11, 2021).

Public Service Law (PSL) §168. The Certificate Order authorizes High River to construct and operate a utility-scale solar electric generating facility (the Project) in the Town of Florida, Montgomery County, New York. The Certificate Order contains Certificate Conditions that require several compliance filings by the Certificate Holder, including conditions for construction and operational impact mitigation,² to be approved by the Siting Board, or the Public Service Commission (Commission) once the Siting Board's jurisdiction has ceased.

On August 31, 2021, the Certificate Holder filed Compliance Filing 75. The Certificate Holder Supplemented this compliance filing on January 26, 2022, and January 23, 2023.

Through this Order, the Commission approves Compliance Filing 75 for the purpose discussed below.

BACKGROUND

Condition 75

Certificate Condition 75 requires the Certificate Holder to submit the following:

The Certificate Holder shall present to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary at a minimum of 60 days prior to the start of construction as Compliance Filings:

a) Final drawings for the Solar Generating Facility, incorporating any changes to the design, including:

² Under 16 NYCRR §1002.2, "[t]he applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

- (i) Location of all noise sources and receptors identified with Geographic Information Systems (GIS) coordinates and GIS files;
- (ii) Proposed grading and noise source heights and ground elevations; CASE 17-F-0597 25
- (iii) Site plan and elevation details of substation components as related to the location of all relevant noise sources (e.g., transformers, emergency generator, HVAC equipment, if any).
- (iv) Any identified mitigations, specifications, and appropriate clearances (e.g., for sound walls, barriers, and enclosures, if any).
- (v) Sound information from the manufacturers for all noise sources (e.g., Transformers, inverters, HVAC equipment, emergency generators, if any).

b) Revised sound modeling with the final specifications of equipment selected for construction to demonstrate that the Project is modeled to meet Local Laws on noise (if any) and the following sound goals for residences and boundary lines existing as of the date of the order as noted:

- (i) 35 dBA Leq-1-hour maximum equivalent continuous average sound level from the Substation transformer(s) outside any permanent or seasonal nonparticipating residence within the 35 dBA noise contour from any substation transformer(s), on the presumption that a 5 dBA prominent tone penalty applies to a basic design goal of 40 dBA.

- (ii) 45 dBA Leq-1-hour maximum equivalent continuous average sound level from the Facility outside at any permanent or seasonal non-participating residences from other daytime-only operational sound sources associated with the Facility, such as inverters and medium voltage transformers. If the sound emissions from these sources are found to contain a prominent discrete tone at any non-participating residence whether through modeling, calculation, or pre-construction field testing, then the sound levels at the receptors shall be subject to a 5 dBA penalty; i.e., a reduction in the permissible sound level to 40 dBA Leq-1-hour.
- (iii) 55 dBA Leq-1-hour maximum equivalent continuous average sound level from the Facility across any portion of non-participating property, except for portions delineated as wetlands and utility rights of way. This shall be demonstrated with modeled sound contours and discrete sound levels at worst-case locations. No penalties for prominent tones will be added in this assessment.
- (iv) 50 dBA Leq-1-h, maximum equivalent continuous average sound level from the Facility outside any participating residence. No penalties for prominent tones will be added in this assessment.

(v) For any noise sources, other than the ones identified in certificate conditions 75(b)(i) and 75(b)(ii) (e.g., tracking systems, motors, emergency generators), that exceed the design goals specified in conditions 75(b)(i) during the nighttime; 75(b)(ii) during the daytime; or 75(b)(iii) and 75(b)(iv) (nighttime or daytime), or approach those goals within 10 dBA, will be included in the final computer model modeling subject to the design goals indicated in this section, as applicable to the time of the day those noise sources will be operating (e.g., daytime, nighttime). For these noise sources a tonal analysis will be conducted as specified in Condition 75(b)(ii) and SEEP Guide.

c) Final computer noise modeling and tonal evaluation shall be conducted in accordance with the specifications in the SEEP Guide.

PUBLIC NOTICE

On August 31, 2021, the Certificate Holder filed Compliance Filing 75. The Certificate Holder Supplemented this Compliance Filing on January 26, 2022, and January 23, 2023.

Pursuant to 16 NYCRR §1002.2(d), "[a]ny interested person or party may file comments regarding any compliance filing within 21 days of the filing and service of such compliance filing done in accordance with subdivision (c) of this section." The 21-day public comment period ended on September 21, 2021, and no comments were filed during or after that required comment period.

LEGAL AUTHORITY

Under PSL §168(7), "[f]ollowing any rehearing and any judicial review of the Board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent Board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate." For purposes of the subject compliance filings described here, the Siting Board's jurisdiction has ceased, as such, pursuant to 16 NYCRR §1002.2(f)³ the Commission has the jurisdiction to approve these compliance filings.⁴

Public Service Law §168(5) includes a delegation of authority to the Commission for compliance administration. That section states "[t]he department [of Public Service] or the [Public Service] Commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the [Siting] board's order [Order Granting Certificate of Environmental Compatibility and Public Need]."

The Siting Board's rules, 16 NYCRR §1002(1), establish procedures and requirements for a certificate holder to comply with the "terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the certificate." Sixteen NYCRR §1002.2 describes the procedures that a certificate holder must comply with, including filing requirements, notice procedures, and outlines the jurisdiction

³ "Compliance filings will not be effective until approved by the Board or by the Commission after the Board's jurisdiction has ceased."

⁴ Specifically, PSL §168(7) states that "[f]ollowing any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate."

of the Siting Board and the Commission in approving compliance filings. Sixteen NYCRR §1002.2(b) establishes that a phased approach to compliance filings can occur so long as the "applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

Pursuant to 16 NYCRR §1002.3 a certificate holder is required to submit "(a) a description of and citation to the requirement in a certificate or an order for which compliance is to be demonstrated; (b) a description of how the applicant will comply with the requirements of the certificate or order; and (c) final maps, plans, diagrams, drawings, studies, reports or other documents demonstrating compliance." Under 16 NYCRR §1002.2(g), the Siting Board, or the Commission if the Siting Board's jurisdiction has ceased, may approve compliance filings subject to specified terms, conditions, limitations, or modifications. Finally, pursuant to 16 NYCRR §1002.2(i), the standard of review for compliance filings shall be whether the "compliance filing reasonably assures compliance with the Certificate."

DISCUSSION

Conditions 75

On August 31, 2021, the Certificate Holder filed Compliance Filing 75 for the Sound Generating Equipment Installation and Operation Phase. Certificate Condition 75 requires sound modeling and other filings related to noise analyses of the Project. The Certificate Holder supplemented this compliance filing on January 26, 2022, and January 23, 2023. DPS Staff reviewed Compliance Filing 75, as supplemented, and advises that the modeling and sound analyses meets the

requirements established in the Certificate Order related to Certificate Condition 75.

Accordingly, the Commission finds that the filing reasonably assures compliance with Certificate Condition 75 of the Certificate Order and is approved for the Sound Generating Equipment Installation and Operation Phases.

CONCLUSION

The Commission finds that Compliance Filing 75, as filed and supplemented, reasonably assures compliance with corresponding Certificate Condition 75 in the Certificate Order and is approved for the purposes discussed below. Pursuant to the Certificate Order, additional compliance filings are required throughout the operational life of the Project.

The Commission orders:

1. The operational sound and noise modeling for the sound generating equipment filed by High River Energy Center, LLC, on August 31, 2021, and supplemented on January 26, 2022, and January 23, 2023, pursuant to Certificate Condition 75, is approved for the Sound Generating Equipment Installation and Operation Phases.

2. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary